SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
JUL 24 1956
JOHN T. FEY, Clerk

No. 280

IN THE SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1956

P. S. GUSS dba PHOTO SOUND PRODUCTS MANUFACTURING COMPANY,

Appellant,

v.

UTAH LABOR RELATIONS BOARD,

Appellee.

On Appeal from the Supreme Court of the State of Utah

JURISDICTIONAL STATEMENT

HAROLD P. FABIAN
PETER W. BILLINGS
801 Continental Bank Building
Salt Lake City, Utah
Attorneys for Appellant

INDEX
and
TABLE OF CITATIONS

	Page
JURISDICTIONAL STATEMENT	1
OPINION BELOW	2
JURISDICTION	2
STATUTES INVOLVED	3
THE QUESTION PRESENTED	3
STATEMENT OF THE CASE	4
THE QUESTIONS ARE SUBSTANTIAL	8
1.	8
2.	10
APPENDIX A	17
APPENDIX B	30

CASES

Amalgamated Assoc. of Street, Electric & Ry. Employees v. WERB, 340 U.S. 383 (1951)	14, 15
Amalgamated Meat Cutters v. Fairlawn Meats, Inc. No. 728, 100 Sup. Ct. Adv. P. 600	8
Bethlehem Steel Company v. New York State Labor Relations Board, 330 U.S. 767 (1946)	3, 10
Building Trades Council v. Kinard, 346 U.S. 933 (1954)	8, 9
Erie v. Thompkins, 304 U.S. 64	10
Garner v. Teamsters Union, 346 U.S. 485 (1953)	11, 12
Guss v. Utah Labor Relations Board, 296 P. 2d 733	12, 13
Interstate Overall Service, Inc. v. New England Joint Board, Retail, Wholesale and Department Store Union, 37 L.R.R.M. 1431	9
LaCrosse Telephone Co. v. WERB, 336 U.S. 18 (1948)	3, 10, 13, 14
New York State Labor Relations Board v. Wags, 130 N.Y.S. 2d 731	9

INDEX — Continued

	Page
Pederson v. NLRB ___Fed. 2d___, 38 L.R.R.M. 2227	13
Plankinton Packing Co. v. WERB, 338 U. S. 953 (1950)	11
Raisch Motors v. New York State Labor Relations Board, 35 L.R.R.M. 1631	9
Retail Clerks v. Your Food Stores, 225 Fed. 2d 659	9, 10, 13, 14, 15
San Diego Building Trades Council v. Garmon, 100 Sup. Ct. Adv. p. 600	8
United Auto Workers v. WERB ___U.S.___, 100 L. Ed. Adv. p. 666 (1956)	3
Universal Car and Service Company v. IAM, 35 L.R.R.M 2087	9

STATUTES

U. S. Constitution	
Article I, section 8	3
Article VI, clause 2	3
61 Stat. 146 (29 U.S.C. 160)	28
Section 2 (6) (7)	4
Section 8 (a) (1) (3) (5)	5
Section 9 (a)	3, 5
Section 10 (a)	3, 14, 28
Utah Code Annotated, 1953	
Section 34-1-1	3, 17, 18
2	3, 18, 19, 20
3	3, 21
8	3, 21, 22, 23, 24
10	3, 24, 25, 26, 27, 28

IN THE SUPREME COURT
of the
UNITED STATES

OCTOBER TERM, 1956

No._____.

P. S. GUSS dba PHOTO SOUND PRODUCTS MANUFACTURING COMPANY,

Appellant,

v.

UTAH LABOR RELATIONS BOARD,

Appellee.

On Appeal from the Supreme Court of the State of Utah

JURISDICTIONAL STATEMENT

Jurisdictional Statement

Appellant appeals from the order of the Supreme Court of the State of Utah entered on April 30, 1956, affirming the order of the Utah State Labor Relations Board, and from the order of the Supreme Court of Utah denying Petition for Rehearing entered June 4, 1956, and submits this statement to show that the

Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the Supreme Court of Utah is reported at 296 P. 2d 733. No opinion was entered with the order denying rehearing. The opinion of the Supreme Court of Utah is attached hereto as Appendix "B".

Jurisdiction

This proceeding started as an unfair labor practice charge filed with the Utah Labor Relations Board by the United Steelworkers of America, CIO against appellant, under the Utah Labor Relations Act, Title 34, Ch. 1, Utah Code Annotated, 1953, secs. 1-15. Appellant defended on the ground that he is engaged in a business affecting interstate commerce, i.e., the manufacture of specialized photographic equipment for the United States Air Force and that by reason thereof the matter was within the exclusive jurisdiction of the National Labor Relations Board and the Utah Board had no jurisdiction to act under the Federal Constitution and the National Labor Relations Act. The order of the Supreme Court of Utah was entered April 30, 1956 and the order denying rehearing on June 4, 1956. Notice of appeal was filed in the Supreme Court of Utah on June 14, 1956.

Jurisdiction of the Supreme Court of the United States to review by appeal the decision of the Supreme Court of the State of Utah upholding the jurisdiction

of the Utah Labor Relations Board, is conferred by Title 28, USC, § 1257(2). The following cases substantiate the jurisdiction of the Supreme Court of the United States to review the judgment on direct appeal in this case. *LaCrosse Telephone Company* v. *WERB*, 336 U.S. 18 (1948); *Bethlehem Steel Company* v. *New York State Labor Relations Board*, 330 U.S. 767 (1946); *United Auto Workers* v. *WERB*, — U.S. ——, 100 L. Ed. Adv. p. 666, decided June 4, 1956.

Statutes Involved

Sections 34-1-1, 2, 3, 8 and 10, Utah Code Annotated, 1953, the pertinent provisions of the Utah Labor Relations Act, and section 10(a) of the National Labor Relations Act, 61 Stat. 146, 29 U.S.C. 160, are set forth as Appendix "A" hereto.

The Question Presented

Whether the National Labor Relations Act, as amended (29 U.S.C. § 151-168), Article VI, clause 2 and Article I, sec. 8 of the Constitution of the United States preclude the Utah Labor Relations Board from asserting jurisdiction over an unfair labor practice charge filed under state law against appellant who is engaged in a manufacturing business affecting interstate commerce where the National Labor Relations Board has previously certified the union as the bargaining representative for appellant's employees under section 9(a) of the National Labor Relations Act, but has declined to exercise its jurisdiction to hear an unfair labor practice charge filed under section 8 of that Act.

Statement of the Case

Appellant is a Utah resident engaged in business in Salt Lake City under the trade name of Photo Sound Products Manufacturing Company as a manufacturer of specialized photographic equipment for the United States Air Force. The business during the period in question involved three Air Force contracts, one for chemical mixers in the amount of $84,896.73, one for printers in the amount of $37,222.42, and one for print straighteners in the amount of $29,906.35. To perform these contract for the Air Force, Photo Sound purchased from sources from outside the state, stainless steel in an amount "a little less than $50,000". The finished products were shipped to the Air Force at Wright-Patterson Field, Dayton, Ohio and other Air Force bases, both inside and outside the state of Utah.

Shortly after the company started operating, the United Steelworkers of America, CIO, in December of 1953, filed with the National Labor Relations Board, a petition under sec. 9 of the National Labor Relations Act for certification of that union as the bargaining representative for all of the employees of the company, except clerical and supervisory employees, as defined in the National Act. At the time for hearing on the petition on January 19, 1954, the company and the union entered into an agreement for a consent election to be conducted by the National Labor Relations Board. Among other things, this agreement recited that the employer, Photo Sound, was "engaged in commerce within the meaning of Section 2(6), (7) of the National Labor Relations Act."

The election was conducted by the National Board on April 26, 1954 and was won by the union, 15 to 11. Under date of May 4, 1954, the United Steelworkers of America, CIO, were duly certified by the National Labor Relations Board pursuant to section 9(a) of the National Labor Relations Act. (R. 1)

There ensued a period of charges and recriminations, interposed with collective bargaining sessions. Even before the first bargaining session, the union filed with the National Labor Relations Board, under section 8(a) (1), (3) and (5) of the National Labor Relations Act, a charge of unfair labor practices against Photo Sound. (R. 2) This charge was being investigated by the National Labor Relations Board during June and July, 1954, while the collective bargaining negotiations were in progress.

In July, 1954, the National Labor Relations Board issued new "yardsticks" which it indicated it would apply to determine whether it would, in a particular case, exercise the exclusive jurisdiction granted it by Congress. (NLRB Release No. R-445, July 1, 1954, and No. R-449, July 15, 1954). Applying this new yardstick, the National Board under date of July 21, 1954, declined to consider the matter of the charges filed by the United Steelworkers of America, CIO against Photo Sound, stating:

> "Further proceedings are not warranted, inasmuch as the operations of the company involved are predominately local in character and it does not appear that it would effectuate the policy of the Act to exercise jurisdiction. I am therefore, refusing to issue complaint in this matter." (R.3)

The union, in this notice, was advised that it had the right to a review of this action taken by the National Board in declining to exercise its jurisdiction, but no such appeal was taken.

On July 29, 1954, the union filed substantially the same charge with the State Board that it had previously filed with the National Board. (R. 4) No complaint was issued by the State Board until January 14, 1955 and notice of hearing thereon issued the same date.

At the hearing on the charges before the State Board on February 7, 1955, the company presented its contention that the matter was not within the jurisdiction of the Utah Board, but within the exclusive jurisdiction of the National Labor Relations Board, and objected to the introduction of all evidence and other proceedings on the same grounds. (R. 7) At the close of the union's case, the company renewed its motion to dismiss on the ground that the proceedings were not within jurisdiction of the National Labor Relations Board. (R. 15) Ruling was reserved on the issue by the hearing examiner. (R. 16, 17)

The hearing examiner ruled that the business of Photo Sound affected intrastate as well as interstate commerce and concluded therefrom that the State Board had jurisdiction. (R. 20) Appellant filed its exceptions claiming the matter was exclusively within the jurisdiction of the National Board and that the National Board had not ceded such jurisdiction. (R. 29) The Utah State Labor Relations Board affirmed the ruling of the hearing examiner and issued

an order directing Photo Sound to cease and desist from refusing to bargain collectively with the CIO and directing it to take certain affirmative action with respect to certain of its ex-employees designated in the order. (R. 31-34)

After a motion for rehearing based upon the same contention, that section 10(a) of the National Act precluded state action (R. 35) was denied, a Writ of Review was obtained from the Supreme Court of Utah upon a petition alleging that

> "Contrary to the specific grant of exclusive power to the National Labor Relations Board under said Act, the Utah Labor Relations Board has entertained a charge filed with it by the United Steelworkers of America, CIO, and issued a complaint thereon against Petitioner. That despite the contentions of Petitioner concerning the lack of jurisdiction of said Board, said Board, under date of June 21, 1955, issued its decision and order relating to the labor relations of Petitioner and on June 29, 1955, denied Petitioner's motion for rehearing. At all times herein Petitioner has contended said Board was wholly without authority or jurisdiction to act in the matter." (R. 37)

The only issue briefed or argued to the Supreme Court of Utah was the Federal Constitutional question. The posture of the case before the Utah Supreme Court was thus stated in its opinion as follows:

> "The employer obtained this Writ of Review for the purpose of questioning the jurisdiction of the Utah Labor Relations Board. The sole question before us is whether the state board may act in relation to a business admittedly engaged in interstate commerce and subject to the National Labor Relations Act and the National Labor Relations Board when that

Board declines, upon the grounds stated, to exercise jurisdiction." *Guss* v. *Utah Labor Relations Board*, 296 P. 2d 733, 734.

The Questions are Substantial

1. This case poses the issue expressly not decided by this court in *Building Trades Council* v. *Kinard*, 346 U.S. 933 (1954) and is a corollary to the issue posed in *San Diego Building Trades Council et al.*, v. *Garmon*, No. 785, cert. granted May 7, 1956, 100 Sup. Ct. Adv. p. 600, and *Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 427, AFL, et al* v. *Fairlawn Meats, Inc.*, No. 728, cert. granted May 7, 1956, 100 Sup. Ct. Adv. p. 600:

> Does a decision of the National Labor Relations Board in a particular case *not* to exercise its jurisdiction under its chameleon jurisdictional standards modify the doctrine of this court as announced in the *Bethlehem Steel*, supra, *LaCrosse*, supra, *Plankinton*, infra and *Garner*, infra cases that Congress, by the National Labor Relations Act has left no room for state action over labor relations in industries affecting interstate commerce?

The issue presented is determinative of the authority and jurisdiction of the State Labor Relations Boards, not only in Utah, but also in Wisconsin, New York, Colorado, Connecticut, Kansas, Massachusetts, Pennsylvania and Rhode Island in fields where the National Act grants exclusive jurisdiction to the National Labor Relations Board, but where the National Board has, for budgetary or other policy reasons, declined to exercise the jurisdiction granted it by Congress.

Since the statement of this court in *Building Trades Council* v. *Kinard*, supra:

> "Since there has been no clear showing that respondent has applied to the National Labor Relations Board for appropriate relief, or that it would be futile to do so the Court does not pass upon the question suggested by the opinion below of whether the state court could grant its own relief should the board decline to exercise its jurisdiction."

there has been a conflict in the state decisions as to jurisdiction of the state courts or Boards to act. Compare *New York State Labor Relations Board* v. *Wags*, 130 N.Y.S. 2d 731, aff'd. Lab. Rel. Rep. (35 L.R.R.M. 2058), and *Universal Car and Service Company* v. *IAM* Lab. Rel. Rep. (35 L.R.R.M. 2087) (Mich. 1954) with *Interstate Overall Service, Inc.* v. *New England Joint Board, Retail, Wholesale and Department Store Union, CIO*, Lab. Rel. Rep. (37 L.R.R.M. 1431) (Mass. 1955). There has even been a conflict between the state boards and state courts in the same state over the power of boards to act. Compare *New York State Labor Relations Board* v. *Wags*, supra, and *Raisch Motors* v. *New York State Labor Relations Board*, Lab. Rel. Rep. (35 L.R.R.M. 1631) (New York, 1955).

There is even a conflict between the Utah Supreme Court and the Court of Appeals for the Tenth Circuit. In the instant case, the state court has upheld the jurisdiction of the State Board. Yet in *Retail Clerks v. Your Food Stores*, 225 F. 2d 659, (10th Cir. 1955), the federal court held:

> "Moreover, the refusal by the NLRB to entertain the instant grievance on its merits

did not of itself alter the pertinent law thereby revesting the state court with authority to proceed. Amended Section 10(a) of the Act specifically provides what this Court deems to be the only way state authorities can be vested with authority now within the exclusive purview of the Act. Unless and until there is an express ceding of jurisdiction to a proper state agency, exclusive jurisdiction remains in the federal agency. For sake of order such must be true. Otherwise, an interminable problem of determining jurisdiction would exist, throwing needless confusion into an area clearly preempted by Congress." 225 F. 2d 659, 653.

That case, though cited and argued to the Utah Supreme Court was not even mentioned in its opinion in the case at bar. Thus, in Utah, depending upon whether the issue is before a state or a federal court, different results will ensue. What this court has done in the diversity jurisdiction area by *Erie* v. *Thompkins*, 304 U.S. 64, it should do in situations where state courts have ignored decisions of applicable Courts of Appeal on governing Federal Constitutional questions.

2. The decision of the Utah Supreme Court is contrary to the decisions of this court. In *Bethlehem Steel* v. *New York State Labor Relations Board*, supra, this court held that certification of a foreman's union by the New York State Board in an industry subject to the National Labor Relations Act where the National Board had refused to issue a certification as a matter of policy was invalid and in conflict with the National Act and the Commerce clause of the Constitution.

In *LaCrosse Telephone Corporation* v. *WERB*,

supra, this court rejected a contention that the Wisconsin Board could exercise its jurisdiction in a certification proceeding until and unless the National Board chose to act. The *LaCrosse* and *Bethlehem* doctrine was applied in *Plankinton Packing Company* v. *WERB*, 338 U.S. 953 (1950) to an unfair labor practice charge filed under the State Act. The clear implication of these decisions of this court is that wherever the employer-employee relationship is one over which Congress has power of regulation and with regard to which Congress has acted, State power is suspended and cannot constitutionally be exercised. The criterion is not whether the agency administering the Federal law has acted or intends to act, but rather it is whether Congress has asserted its power to regulate the particular relationship.

This doctrine was extended in *Garner* v. *Teamsters Union*, 346 U.S. 485 (1953) to state courts in the exercise of their equity jurisdiction to enjoin picketing and other practices which form a part of labor disputes and unfair labor practices placed exclusively by Congress in the hands of the NLRB.

This court summarized the doctrine in the *Garner* case as follows:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint, notice and hearing thereon, including judicial relief, pending a final administra-

tive order. Congress evidently considered that centralized administration of specially designated procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward local controversies. * * " 346 U.S. 485, 490.

and reaffirmed its application to state boards as well as state courts as follows:

> "A multiplicity of tribunals and a diversity of procedure are quite as apt to produce incompatible or conflicting adjudication, as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review, or on application of the federal board, precludes state courts from doing so. (citing cases) And the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the confines of the federal board, also exclude state courts from like action." 346, U.S. 485, 491.

Despite this clear and well defined statement by this court as to the exclusiveness of the National Board's jurisdiction, and despite the fact that the National Board originally exercised its jurisdiction in the particular case, the Utah Labor Relations Board held that it had jurisdiction in the face of the claim of appellant that it cannot constitutionally so act. The Utah Supreme Court has sustained the order of the State Board.

The Utah Court gave two grounds for its decision:

> (1) The Utah law and the National Act are substantially similar and the Utah Board probably reached the same result as the National Board would have.

(2) Since the National Board has declined to exercise its jurisdiction "the values of immediate legal supervision of labor controversies within this company can only be maintained through state action." (296 P. 2d 733, 738)

It is submitted that these reasons and the result reached are contrary to the decisions of this court and flaunt the Commerce and Supremacy clauses of the Constitution and the express language of section 10(a) of the National Labor Relations Act.

As to the first basis for the decision of the Utah Supreme Court, this court in *LaCrosse Telephone Corporation* v. *WERB*, supra, said of the *Bethlehem* case:

> "Since the employers in question were subject to regulation by the National Board, we thought the situation too fraught with potential conflict to permit the intrusion of the state agency, even though the National Board had not acted in the particular cases before us." 336, U.S. 18, 25.

As long as the National Board may exercise jurisdiction merely by unilaterally changing its jurisdictional standards (See *Pederson* v. *NLRB*, —— Fed. 2d——, Lab. Rel. Rep. (38 L.R.R.M. 2227) (2d Cir. 1956) a potentiality of conflict remains. The Court of Appeals for the Tenth Circuit in *Retail Clerks* v. *Your Food Stores*, supra, so held in quoting with approval the following from *Universal Car and Service Co.* v. *IAM*, supra:

> "If the jurisdiction of the state courts is to depend — not upon the Act of Congress and the actual jurisdiction of the NLRB — but upon the day-to-day or month- to-month discretionary exercise of jurisdiction by the Board, dependent upon changing budgetary conditions or upon its

economic, scoial or political views at the moment, then neither the courts nor the litigants can know with any certainty where jurisdiction lies, nor whether in a given case jurisdiction existing at the time of its commencement will continue until its final decision." 225 F. 2d 659, 663.

This potential conflict was the basis for this court's decision in the *LaCrosse Telephone* case, supra:

> "The uncertainty as to which board is master and how long it will remain such can be as disruptive of peace between various industrial factions as actual competition between two boards for supremacy. We are satisfied with the wisdom of the policy underlying the Bethlehem Case and adhere to it." 336, U.S. 18, 26.

The second basis of the Utah Supreme Court decision is in direct conflict with the express language of section 10(a) of the National Labor Relations Act itself. That act allows state action in industries affecting interstate commerce only where the National Board had ceded jurisdiction to a state board. As this court said in the *LaCrosse case*:

> "The result we have reached is not changed by the Labor Management Relations Act of 1947. That act grants the National Board authority, under specified conditions, to cede its jurisdiction to a state agency, but it does not appear that there has been any cession of jurisdiction to Wisconsin by the National Board in representation proceedings." 336, U.S. 18, 27.

And again in *Amalgamated Association of Street, Electric and Railway Employees* v. *WERB*, 340 U.S. 383, (1951):

> "* * * The legislative history of the 1947 Act refers to the decision of this court in Beth-

lehem Steel Co. vs. New York Labor Board, 330 U.S. 767 (1947) and, in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the acts covers insofar as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative." 340, U.S. 383, 397.

Unless and until there is an express ceding of jurisdiction to the Utah Labor Relations Board exclusive jurisdiction remains in the National Board. As the Court of Appeals for the Tenth Circuit said in *Retail Clerks Local* v. *Your Food Stores*, supra:

> "For sake of order such must be true. Otherwise, an interminable problem of determining jurisdiction would exist, throwing needless confusion into an area clearly preempted by Congress." 225, F. 2d 659, 663.

No cession of jurisdiction has been made to the Utah Board. All the National Board has done in this case is to elect for budgetary or other policy reasons not to exercise its jurisdiction to the extent authorized by Congress. Until Congress amends section 10(a) of the National Act to permit state action, the State Board cannot act in cases of this nature. An attempt of the State Legislature to authorize state boards to act in such circumstances or an interpretation by the state court that the State Legislature has so acted, is contrary to the Commerce and Supremacy clauses of the Federal Constitution.

It is submitted that the decision of the Supreme Court of Utah is patently in error and should be reversed.

Respectfully submitted,

HAROLD P. FABIAN

PETER W. BILLINGS

Counsel for Appellant

APPENDIX A

Utah Code Annotated, 1953

Section 34-1-1. The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this section is enacted, is declared to be as follows:

(1) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of others.

(2) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration.

It is also recognized that whatever may be the right of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted, in the conduct of their controversy, to intrude directly into the primary rights

of third parties to earn a livelihood, transact business and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint, or coercion.

(3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.

(4) It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated.

While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

Section 34-1-2. When used in this act:

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or

any state or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employer by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication within the state of Utah.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or

the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce within the state of Utah.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 34-1-8.

(9) The term "labor dispute" means any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives.

(10) The term "secondary boycott" shall include combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by (a) withholding patronage, labor, or other beneficial business intercourse; (b) picketing; (c) refusing to handle, install, use or work on particular materials, equipment or supplies; or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.

(11) The term "election" shall mean a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bagaining representatives or for any other purpose specified in this chapter and shall include elections conducted by the board, or, unless the context clearly indicates otherwise, by any tribunal having competent jurisdiction or whose purisdiction was accepted by the parties.

(12) The term "Labor Relations Board" means the industrial commission of Utah.

Section 34-1-3. (a) The industrial commission of Utah is designated as the labor relations board hereinafter referred to as the board.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall, at all times, constitute a quorum. The board shall have an official seal which shall be judicially noticed.

(c) The board shall at the close of each fiscal year make a report in writing to the legislature and to the governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries and duties of all employees and officers in the employ or under the supervision of the board, and an account of all moneys it has disbursed.

Section 34-1-8.

(1) It shall be an unfair labor practice for an employer, individually or in concert with others:

(a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 34-1-8.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the board pursuant to 34-1-7(a) an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 34-1-10(a), in the appropriate collective bargaining unit covered by such agreement when made.

(d) To refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit; provided, that when two or more labor organizations claim to represent a majority of the employees in the bargaining unit the employer shall be free to file with the board a petition for investigation of certification of representatives and during the pendency of such proceedings the employer shall not be deemed to have refused to bargain.

(e) To bargain collectively with the representative of less than a majority of his employees in a collective bargaining unit.

(f) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

(2) It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 34-1-8, or to intimidate his family, picket his domicile, or injure the person or property of such employee or his family.

(b) To coerce, intimidate or induce any employer to interfere with any of his employees in the enjoyment of their legal rights including those guaranteed in section 34-1-8, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To cooperate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

(d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

(e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion, or sabatoge, the obtaining, use or disposition

of materials, equipment, or services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

(f) To take unauthorized possession of property of the employer.

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1) and (2) of this section.

Section 34-1-10. (a) The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 34-1-8) affecting intrastate commerce or the orderly operation of industry. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise.

Hearings.

(b) Whenever it is charged that any person has engaged in or is engaged in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a mem-

ber thereof, or before a designated agent or agency at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such preceeding the rules of evidence prevailing in courts of law or equity shall be controlling.

Report of Hearings — Orders of Board.

(c) The testimony taken by such member, agent, or agency or the board shall be reduced to writing and filed with the board. Thereafter in its discretion, the board upon notice may take further testimony or hear argument. If upon all the testimony taken the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair practice, then the board shall state its findings of fact and shall issue and cause to be served on such person an order to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this act. Such order may further require such person

to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the said complaint.

Time in Which Board May Modify Orders.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time upon reasonable notice and in such manner as it may deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

Petition to Supreme Court to Enforce Orders.

(e) The board shall have power to petition the Supreme Court of Utah (wherein the unfair labor practice in question occurred or wherein such person resides or transacts business) for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the board. Upon such filing, the court shall cause notice thereof to be servied upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings

set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the board, its member agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, its member, agent or agency, the court may order such additional evidence to be taken before the board, its member, agent or agency, and to be made part of the transcript. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the state Supreme Court shall be exclusive and its judgment and decree shall be final.

Persons Aggrieved by Order of Board — Review.

(f) Any person aggrieved by a final order, the board granting or denying in whole or in part the relief sought, may obtain a review of such order in the Supreme Court of Utah by filing in such court a

written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith served upon the board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under subsection (e), and shall have the same exclusive jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decress enforcing modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; and the findings of the board as to the facts, if supported by evidence, shall in like manner be conclusive.

Proceedings Not a Stay of Orders.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

Petitions to be Heard within Ten Days.

(h) Petitions filed under this act shall be heard expeditiously, and if possible within ten days after they have been docketed.

61 Stat. 146, 29 U.S.C. 160

Section 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging

in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustments or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF UTAH

P. S. Guss, d/b/a Photo Sound Products Manufacturing Company,
Plaintiff,

v.

Utah Labor Relations Board and United Steelworkers of America, CIO,
Defendents.

McDONOUGH, Chief Justice:

The plaintiff, P. S. Guss, d/b/a Photo Sound Manufacturing Company, is engaged in the manufacturing of specialized equipment for the United States Air Force on a contract basis. The amount of these contracts with the government or its agencies totaled $152,025.50, and materials were purchased outside the state in an amount "a little less than $50,000." The finished products were shipped to Air Force Bases both within the state and without.

In December, 1953, the United Steelworkers of America, CIO, filed with the National Labor Relations Board, a petition for certification of that union as the bargaining representative for employees of the company. The company and the union entered into an agreement for a consent election to be conducted by the N.L.R.B., the agreement reciting that the employer

is "engaged in commerce within the meaning of Section 2(6)(7)[1] of the National Labor Relations Act." The election was won by the union and the United Steelworkers of America, CIO, was certified by the N.L.R.B.

The union filed charges of violations under Section 8[2] of the National Labor Relations Act with the N.L.R.B., alleging unfair labor practices on the part of the employer. On July 21, 1954, the National Labor Relations Board declined to consider the charges of the union, stating:

> "Further proceedings are not warranted, inasmuch as the operations of the company involved are predominately local in character and it does not appear that it would effectuate the policy of the Act to exercise jurisdiction."

Thereafter, the union filed substantially the same charges with the State Board, which, after a hearing on the charges, ordered Photo Sound to cease and desist from refusing to bargain collectively with the CIO and further directing that certain discharged employees be reinstated with compensation for the time for which they had been unemployed.

The employer obtained this Writ of Review for the purpose of questioning the jurisdiction of the Utah Labor Relations Board. The sole question before us is whether the state board may act in relation to a business admittedly engaged in interstate commerce and subject to the National Labor Relations Act and the National Labor Relations Board when that Board

1. 29 U.S.C. § 152 (6) § (7).
2. 29 U.S.C. § 158.

declines, upon the grounds stated, to exercise jurisdiction.

Apparently, the N.L.R.B. determined not to take jurisdiction of this matter on the basis of jurisdictional standards established by the Board, summarized in N.L.R.B. Press Release R-449, July 15, 1954. These standards, promulgated to relieve the federal agency of some of the weight of matters falling within its jurisdiction under the broad provisions of Section 3(6)(7) of the Act, select arbitrary lines determined by the nature of the business and its size. The difficulty here is that if the Utah Labor Board has no jurisdiction and the National Labor Board refuses to accept jurisdiction, the parties are left to their own devices in securing industrial harmony, although both the federal and local government have evidenced concern with labor relations in providing law and agencies to administer it.

Plaintiff cites to us language from many cases decided by the U. S. Supreme Court concerning whether or not Congress intended to pre-empt the entire field of labor-management relations within its power to do so under the commerce clause of the Constitution. But concedes that an instance of the refusal of the N.L.R.B. to take jurisdiction, as here, has never been litigated before that court.

Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234, (1947) involved the question of whether the state board could certify a foreman's union subject to the National Labor Relations Act where the

national board had refused to certify that union as a matter of board policy. The court stated through Mr. Justice Jackson:

> " . . . If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict. The State argues for a rule that would enable it to act until the federal board had acted in the same case. But we do not think that a case by case test of federal supremacy is permissible here. The federal board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general. It asserts, and rightfully so, . . . its power to decide whether these foremen may constitute themselves a bargaining unit. We do not believe this leaves room for the operation of the state authority asserted."

A similar result was reached in La Cross Telephone Corporation v. Wisconsin Employment Relations Board, 336 U. S. 18, 69 S. Ct. 379, 93 L. Ed. 463 (1948) and the Supreme Court further emphasized its view that a state's certification of a bargaining unit in the absence of N.L.R.B. action created conflict in the field of labor relations of groups in interstate commerce:

> " . . . We know that administrative practice also disposes of cases in which no order has been entered. Disposition of controversies on an administrative as distinguished from a formal basis will often reflect the attitudes of the National Board which have not been reduced to

orders in those specific cases. A certification by a state board under a different or conflicting theory of representation may therefore be as readily disruptive of the practice under the federal act as if the orders of the two boards made a head-on collision. . . ."

On the basis of these two cases, the Court reversed a decision of the Wisconsin Supreme Court (225 Wis. 285, 38 N.W.2d 688) which held that the State Employment Relations Board had jurisdiction over a matter of *unfair labor practices* in the absence of a federal board ruling. Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U.S. 953, 70 S. Ct. 491, 94 L. Ed. 588 (1950).

However, certain inroads have been made upon the doctrine of exclusiveness of the National Board's jurisdiction under the familiar principle the Congress may determine how far its regulation of interstate commerce shall go, and when it circumscribes its regulation, and occupies only a limited field, state regulation outside that limited field is not forbidden or displaced. Where the peace of the community is threatened by mass picketing, threats, property damage, and obstruction of streets, a state may act to enjoin such activities. Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740, 62 S. Ct. 820 L. Ed. 1154, (1942). Recurrent, unannounced work stoppages are neither prohibited nor protected by the Taft-Hartley Act and hence a state may control that conduct. International Union v. Wisconsin Employment Relations Board, 336 U. S. 245, 69 S. Ct. 516, 93 L. Ed. 651, (1949). See also Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board,

336 U. S. 301, 69 S. Ct. 584, 93 L. Ed. 691, (1949). The Supreme Court has permitted an action for damages in a state court by an employer for injury done in a labor dispute, holding that there was no compensatory relief provided under the federal Act and hence no conflict with its provisions. United Constr. Workers v. Laburnum Constr. Corp., 347 U. S. 656, 74 S. Ct. 833, 98 L. Ed. 1025, (1954).

The most recent Supreme Court pronouncement in this area is found in Weber et al., Anheuser-Busch, Inc., 348 U. S. S. Ct. 480, 99 L. Ed. 468, (1955) wherein the court held that the exclusive primary jurisdiction of the National Labor Relations Board prevented a state court's enjoining certain activities, although the federal board had determined that no violation of Section 8(b)(4)(D) was committed by those activities. The employer, the petitioning party, included violations of other subsections of the act in its complaint before the court which had not been filed as charges before the N.L.R.B.; the Supreme Court held that the Board's decision was strictly limited to the charge before it and was not tantamount to a determination that no unfair labor practices existed under the Act. However, in holding that the state court had no jurisdiction to issue an injunction in this particular case, Mr. Justice Frankfurter concluded the opinion of the court:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlaws some aspects of labor activities and left others free for the operation of economic forces.

> As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. Such was the situation in Garner v. Teamsters, C. & H. Local Union, supra. But as the opinion in that case recalled, the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much.' . . . This prenumbral area can be rendered progressively clear only by the course of litigation . . ."

Certain language contained in federal cases have presaged the present situation where the N.L.R.B. determined not to her the matter presented to it because of policy or budgetary reasons. It has been recognized that the Board need not accept every controversy of which it has jurisdiction, Haleston Drug Stores v. National Labor Relations Board, 187 F. 2d 418. It was expressly mentioned that in the Garner case there was nothing to suggest that the federal Board would decline to exercise its powers once its jurisdiction was invoked, Garner v. Teamsters, C. & H. Union, 346 U. S. 485, 74 S. Ct. 161, 346 U. S. 485, (1953). Suggestions in the Bethlehem Steel Co. case, supra, and particularly the separate opinion of Mr. Justice Frankfurter, in which he was joined by Mr. Justice Murphy and Mr. Justice Rutledge, indicate that a different view is to be taken of state action where the N.L.R.B.'s determination not to hear a matter takes on the character of a decision, as in that case, and the situation where the N.L.R.B. refuses jurisdiction because of lack of funds or because of the view that the instant industrial relations are more appro-

priately a matter of state concern. The concurrence of Circuit Judge Pope in Capital Service, Inc. v. N.L.R.B., 204 F. 2d 848 (1953) presented the problem now before us without determining the question.

Under this state of the law concerning the National Labor Relations Act, state court's ruling on the jurisdiction of state agencies to act after a declination of jurisdiction by the federal board, have both allowed and denied the state power. We take as our guides to the reasoning of the two views the cases of New York State Labor Relations Board v. Wags Trans. System, 130 N.Y.S. 2d 731, affirmed 134 N.Y.S. 2d 638, and Garmon v. San Diego Building Trades Council, (Cal.), 291 P. 2d 1.

Although we might set forth factual differences between the two cases and perhaps reconcile them by distinguishing our aim is merely to realize the two points of view in order to determine for this court the considerations involved. Both cases consider the provisions of Section 10(a) of the Taft-Hartley Act:[3]

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry* (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may

3. 29 U.S.C. sec. 160 (a).

involve labor disputes affecting commerce, *unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.*" (Emphasis added)

On whether or not this provision provided an exclusive means by which state agency might acquire jurisdiction over matters covered by the federal Act, the New York Court said:

> "In adopting the proviso to Section 10(a) the clear policy of Congress was to prevent the application of state law and procedure which did not conform to the Taft-Hartley Act. Congress was not aware of the earlier practice of ceding jurisdiction to local boards. Indeed, it considered the method desirable. But limitations were placed upon such cession. Apparently Congress decided that it was more important to have no cession than to have it without compliance with the standards it prescribed. A secondary purpose may well have been to encourage state legislation to adopt the Taft-Hartley provisions.
>
> "There have been no cession agreements concluded with the New York Board or any other. Criticism of the proviso to section 10(a) has come from all quarters including Senator Taft who proposed its partial relaxation in 1949. No such amendments have been adopted . . .
>
> "It follows quite logically that Congress provided in section 10(a) the sole means for transferring to state jurisdiction activities which are subject to the National Labor Relations Act, as amended.
>
> "Thus the National Board has rightly decided that by virtue of the 1947 amendment it is without power to cede jurisdiction even

over an essentially local business where the state statute does not impose the same requirements on unions seeking relief as does the National Act."

In support of this view it is important to note that this cession provision was added to the law subsequent to the Bethlehem Steel Co. case; also, the Senate Labor Committee in the 2nd session of the 83rd Congress proposed amendments, which were defeated, to the Taft-Hartley Act which included a provision to allow state courts to assert jurisdiction where the N.L.R.B. determined that the effect on commerce is not sufficiently substantial to warrant the exercise of the Board's jurisdiction. The New York Court quoted from the Pittsburgh Rys. Co. Substation Operators and Maintenance Employees' case, 357 Po. 379, 54 A. 2d 891, 174 A.L.R. 1045:

> "The criterion to determine validity of the exercise of state power is not whether the agency administering federal law has acted upon the relationship in a given case; rather, it is whether Congress has asserted its power to regulate that relationship."

On the other hand, there are a great many equitable arguments in favor of allowing the state jurisdiction over industrial controversies where the federal Board refuses to do so. The federal Board has neither the money nor the time to administer the vast field entrusted to it under the Act and with increasing interstate commerce, must select matters which it will handle on the basis of the effect upon national interests. (See Mr. Justice Frankfurter's opinion in the Bethlehem Steel Co. case.) If the Board determines

that the business done is predominantly local in character, the interests affected must likewise be predominatly local and hence a matter for regulation by the state. If the federal Board declines jurisdiction and the state is prohibited from taking action, a large segment of industrial relations is unregulated, contrary to the purposes of both federal and state acts, and the parties are left to self-help which has already proved disastrous to economy and internal peace.

On these bases, the California Court in the Garmon case, supra, held:

> "The reason for prohibiting state courts from acting in cases in which the Board has jurisdiction is to obtain uniform application of the substantive rules as expressed by Congress, and to avoid diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . .A remedy under federal laws available to an injured party may justify pre-emption of the field of labor relations, but when the application of that rule would result in the loss of all protection, there is no reason to bar state courts from providing relief. There is no conflict of jurisdiction when the federal board determines not to adjudicate the issues. Furthermore, a refusal to accept jurisdiction upon the ground that the issue presneted does not sufficiently affect the national welfare to justify the Board's attention; in effect, is a declaration that the national labor policy will not be jeopardized if the state assumes jurisdiction.
>
> "When Congress enacted the applicable statutes, it must have been aware that an unfair labor practice may effect management and labor in a small business to the same extent as in a large industry. The difference is only the effect

on the national labor and economic level. Certainly Congress did not intend to deprive a business having only a limited effect on interstate commerce of all protection in a labor-management controversy. By giving the Board discretion to accept or refuse jurisdiction, the legislative purpose must have been to give the state courts jurisdiction when the Board specifically determines that the controversy will not affect the national economy."

It appears from our research that both views are logically valid under the existing decisions of the U. S. Supreme Court, and it is conceivable that both views might be legally valid under different circumstances. It is interesting to note that the New York Labor Relations Board has, since the Wags decisions, supra, declared its policy to take jurisdiction over those labor disputes in which it is evident that the National Labor Relations Board will decline to exercise its jurisdiction, under the view that the affirmation of that decision was strictly limited to instances where there is not a clear showing that the national board would have rejected jurisdiction. Raisch Motors, 35 LRRM 1631.

In the present case, there are no allegations that either party was deprived of rights which it might have obtained under the federal law had the N.L.R.B. heard the charges presented to it. There are, in fact, no intimations that the national Board would have disposed of the matter in a way than in which the state board did. No substantive conflicts between the provisions of the Taft-Hartley Act concerning unfair labor practices (29 U.S.C., sec. 158) and the Utah Code (U.C.A. 1953, 34-1-8) have been alleged nor do

any appear with reference to the particular charges involved, i.e., discrimination against union employees and refusal to bargain collectively with certified representatives.

Since we discover no conflict with federal authority in this case, and since the values of immediate legal supervision of labor controversies within this company can only be maintained through state action, we hold that the Utah Labor Relations Board had jurisdiction in this matter and affirm its decision and order. Costs to defendants.